



Steven W. Troxler
Commissioner

North Carolina Department of Agriculture
and Consumer Services
Veterinary Division

R. Douglas Meckes, DVM
State Veterinarian

January 6, 2016

Richard and Petra O'Connell
Kennel Owners
Kindness Kennels
5200 Moss Cove Court
Monroe, NC 28714

NOTICE OF CIVIL PENALTY

**Re: CIVIL PENALTY ASSESSMENT FOR VIOLATIONS OF TITLE 02 N. C.
ADMINISTRATIVE CODE, CHAPTER 52J, SECTIONS .0102(1), (2) and (3) and .0210(c) and (d).
AWS-CP-2016-1**

Facility: Kindness Kennels

Dear Mr. and Mrs. O'Connell:

Pursuant to N. C. General Statute § 19A-40 I am issuing this notice to you that Kindness Kennels is assessed a civil penalty of \$1,700.00 as provided in the enclosed Notice of Violations.

With regard to the civil penalty, within 60 days from the date of receipt, you must do one of the following:

1. Pay the civil penalty assessment; or
2. File a written petition for a contested case hearing with the N. C. Office of Administrative Hearings to appeal the penalty assessment.

Pursuant to N. C. General Statute § 150B-22, either party to a dispute may initiate informal settlement negotiations at any time. To negotiate a settlement of this assessment, you may contact me by telephone at (919) 707-3280. Settlement offers do not extend the 60-day deadline for payment or filing of a contested case petition.

Additional information about your options is provided below:

PAYMENT

To pay the penalty, please send your payment by check or money order made payable to the North Carolina Department of Agriculture and Consumer Services to:

North Carolina Department of Agriculture and Consumer Services
Dr. Patricia Norris
Director, Animal Welfare Section
1030 Mail Service Center
Raleigh, NC 27699-1030

APPEAL

If you file a contested case petition, it must be in writing and in the form prescribed by N.C. General Statute § 150B-23. The petition must be accompanied by a filing fee of twenty dollars (\$20.00) payable to the N.C. Office of Administrative Hearings ("OAH"). Should you have any questions about what the fee would be for your case, please contact the OAH Clerk's Office at 919-431-3000. Payment can be made by cash, money order, certified check or check drawn on an attorney's trust account. Make checks payable to: Office of Administrative Hearings. File the petition and one copy with:

Office of Administrative Hearings
6714 Mail Service Center
Raleigh, NC 27699-6714

Any questions about filing a petition may be directed to the Clerk of OAH by telephone at 919-431-3000. You must serve NCDA&CS by mailing a copy of the petition to:

Ms. Tina Hlabse
North Carolina Department of Agriculture and Consumer Services
Registered Agent and General Counsel
1001 Mail Service Center
Raleigh, NC 27699-1001

Payment of the penalty will not foreclose further enforcement action against you for any new violation. If the violations which resulted in the assessment are of a continuing nature, NCDA&CS reserves the right to assess additional civil penalties in the future or take other enforcement action against you.

Your attention to this matter is appreciated.

Sincerely,

A handwritten signature in dark ink, appearing to read 'Patricia Norris', with a stylized flourish at the end.

Patricia Norris, DVM MS
Director, Animal Welfare Section

Attachment: Notice of Violations, Assessment of Civil Penalty

cc: R. Douglas Meckes, DVM, State Veterinarian
Tina Hlabse, General Counsel, NCDA&CS
Joe Reardon, Assistant Commissioner, NCDA&CS
Christopher R. McLennan, Assistant Attorney General

STATE OF NORTH CAROLINA
COUNTY OF WAKE

NORTH CAROLINA DEPARTMENT
OF AGRICULTURE AND CONSUMER
SERVICES, VETERINARY DIVISION
ANIMAL WELFARE SECTION

IN THE MATTER OF

KINDNESS KENNELS
BOARDING KENNEL

) NOTICE OF VIOLATIONS
) ASSESSMENT OF CIVIL PENALTY
) FOR VIOLATIONS OF 02 NCAC
) 52J .0102(1), (2) and (3) and
) .0210(c) and (d).
)

Acting pursuant to N.C. Gen. Stat. § 19A-30, Dr. Patricia Norris, Director, Animal Welfare Section ("AWS"), North Carolina Department of Agriculture and Consumer Services ("NCDA&CS") makes the following:

FINDINGS OF FACT

1. At all times pertinent to this matter Kindness Kennels ("the kennel") is a boarding kennel licensed pursuant to N.C. General Statute §19A-28.
2. On November 13, 2015, AWS received a complaint concerning the kennel alleging that 4 dogs (Roscoe, Hopkins, Mickey, and Holstein) boarded with the kennel from June 20, 2015 until October 5, 2015 suffered a significant amount of weight loss during their time at the kennel. A fifth dog, named Charlotte, was removed from Kindness Kennels on September 11, 2015 due to her severely underweight body condition.
2. AWS opened an investigation and on November 17, 2015, AWS Animal Health Technician Jay Blatche ("Inspector Blatche") conducted a site visit of the kennel. As part of the site visit, Inspector Blatche interviewed the kennel owner and reviewed the kennel records.
3. The investigation and interview revealed the following:
 - a) The complainant and the kennel owner agree that the 5 rescue dogs documented in the complaint were boarded at Kindness Kennels;
 - b) The kennel owner stated that he did not increase the amount of dog food given to the 5 rescue dogs documented in the complaint, despite noticing their weight loss;
 - c) The kennel owner stated that 2 of the 5 dogs developed significant diarrhea. The kennel owner stated that rather than seeking veterinary care for these 2 dogs, he treated them with an over-the-counter medication labeled for human use.
4. The review of the kennel records revealed:
 - a) At the time of the site visit, no intake or veterinary treatment records were available for the 5 rescue dogs documented in the complaint;
 - b) No records were available for 2 dogs on the premises at the time of the site visit; and
 - c) The 2 dogs on the premises at the time of the site visit did not have current rabies vaccinations.

5. The investigation into the specific case of the dog named Hopkins revealed:
- a) Hopkins was boarded at Kindness Kennels starting on June 20, 2015;
 - b) The kennel owner stated that the dog had diarrhea upon arrival and that he notified the rescue of the condition on June 21st. The complaint alleges that he did not notify the rescue until July 10th;
 - c) The complaint alleges that on July 10th the kennel owner administered a dewormer to Hopkins. The kennel owner stated that he administered an over-the-counter medication, labeled for human use, to Hopkins. There is no documentation that either medication was administered under the direction of a licensed veterinarian;
 - d) The complaint alleges that on September 8, 2015 they requested that the kennel owner take the dog to the veterinarian due to chronic diarrhea and weight loss;
 - e) According to the kennel owner, on September 22, 2015, he took Hopkins to the veterinarian who noted the dog's weight to be 61.1 pounds.
 - f) On October 2, 2015, Hopkins was returned to the veterinary clinic for a recheck examination. At that time the dog weighed 63.8 pounds according to the kennel owner.
 - g) On October 5, 2015, Hopkins was removed from Kindness Kennels and boarded at different kennel;
 - h) On October 15, 2015, Hopkins was reweighed at the veterinary clinic and according to the Kindness Kennel owner, the dog weighed 71 pounds.
 - i) Dr. Pressly, the veterinarian who treated Hopkins in September and October 2015 diagnosed Hopkins as suffering from malnutrition and starvation.
6. The investigation into the specific case of the dog named Holstein revealed:
- a) Holstein was boarded at Kindness Kennels starting on September 7, 2015;
 - b) The kennel owner states that Holstein had diarrhea at the time of intake and that the diarrhea continued for 10-14 days. The kennel owner states that he administered an over-the-counter medication, labeled for human use, to Holstein. There is no documentation that the medication was administered under the direction of a licensed veterinarian;
 - c) The kennel owner states that Holstein was released to another kennel on October 10, 2015.

CONCLUSIONS

As a result of this investigation, the North Carolina Department of Agriculture and Consumer Services, Veterinary Division, Animal Welfare Section, finds that you either by act or omission, violated the provisions the North Carolina Administrative Code 52J .0102(1), (2) and (3) and .0210(c) and (d).

(See Appendix for text of cited General Statutes and Administrative Code)

CIVIL PENALTIES


As required by N.C. Gen. Stat. § 19A-40, in determining the amount of the civil penalty, I have considered the degree and extent of harm caused by the violations listed above.

Accordingly Kindness Kennels is assessed a civil penalty for the following violations:

- 1) \$300.00 for violation of North Carolina Administrative Code 52J .0102(1), (2) and (3)
- 2) \$1,000.00 for violation of North Carolina Administrative Code 52J .0210(c)
- 3) \$400.00 for 2 violations of North Carolina Administrative Code 52J .0210(d)

\$1,700.00 TOTAL AMOUNT ASSESSED

1/6/2016
Date


Patricia Norris, DVM MS
Director, Animal Welfare Section
North Carolina Department of
Agriculture & Consumer Services

Appendix

RELEVANT LAWS AND REGULATIONS

§ 19A-40. Civil Penalties.

The Director may assess a civil penalty of not more than five thousand dollars (\$5,000) against any person who violates a provision of this Article or any rule promulgated thereunder. In determining the amount of the penalty, the Director shall consider the degree and extent of harm caused by the violation. The clear proceeds of civil penalties assessed pursuant to this section shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2. (1995, c. 516, s. 6; 1998-215, s. 3.)

02 NCAC 52J .0102 RECORDS; BOARDING KENNELS

Operators of boarding kennels shall maintain records of all dogs and cats showing the following:

- (1) name and address of owner or person responsible for animal, the date of entry and signature and address of individual to whom animal is released and the date of release;
- (2) description of animal including breed, sex, age and color marking; and
- (3) veterinary care provided while boarded, which shall include date, times, description of medication (including name and dosage) and initials of person administering product or procedure.

History Note: Authority G.S. 19A-24;
Eff. April 1, 1984;
Amended Eff. January 1, 2005.

02 NCAC 52J .0210 VETERINARY CARE

(c) Each dog and cat shall be observed daily by the animal caretaker in charge, or by someone under his direct supervision. Sick or diseased, injured, lame, or blind dogs or cats shall be provided with veterinary care or be euthanized, provided that this shall not affect compliance with any state or local law requiring the holding, for a specified period, of animals suspected of being diseased. If euthanasia is performed at a certified facility, a list of personnel approved to perform euthanasia shall be maintained in a Policy and Procedure Manual as described in 02 NCAC 52J .0800. Diseased or deformed animals shall be sold or adopted only under the policy set forth in the "Program of Veterinary Care." Full written disclosure of the medical condition of the animal shall be provided to the new owner.

(d) All animals in a licensed or registered facility shall be in compliance with the North Carolina rabies law, G.S. 130A, Article 6, Part 6. However, no shelter shall be disapproved following inspection or otherwise cited for failure to inoculate any dog or cat known to be less than 12 weeks old or until such animals have been in the shelter at least 15 days.

History Note: Authority G.S. 19A-24;
Eff. April 1, 1984;
Amended Eff. March 23, 2009; January 1, 2005.